

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

May 15, 2013

Captain Duane Harris
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #12-0149
L.A.S.D. File #012-03786-1336-339

Dear Captain Harris:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 26, 2012, non-fatal shooting of Eduardo Armas by Los Angeles County Sheriff's Department (LASD) Deputies [redacted], Michael Espinosa and Vincent Ortiz. We have concluded that Deputies [redacted], Espinosa and Ortiz acted lawfully in self-defense and defense of others.

The District Attorney Command Center was notified of the shooting at approximately 9:13 p.m., on February 26, 2012. The District Attorney Response Team, comprised of Deputy District Attorney Jason Lustig and District Attorney Senior Investigator [redacted] [redacted], responded to the location. They were given a briefing of the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based upon investigative reports, analyzed evidence reports and witness statements taken during the investigation by the LASD and submitted to this office by Homicide Bureau Detective Gene Morse. Compelled statements were not considered in this analysis.

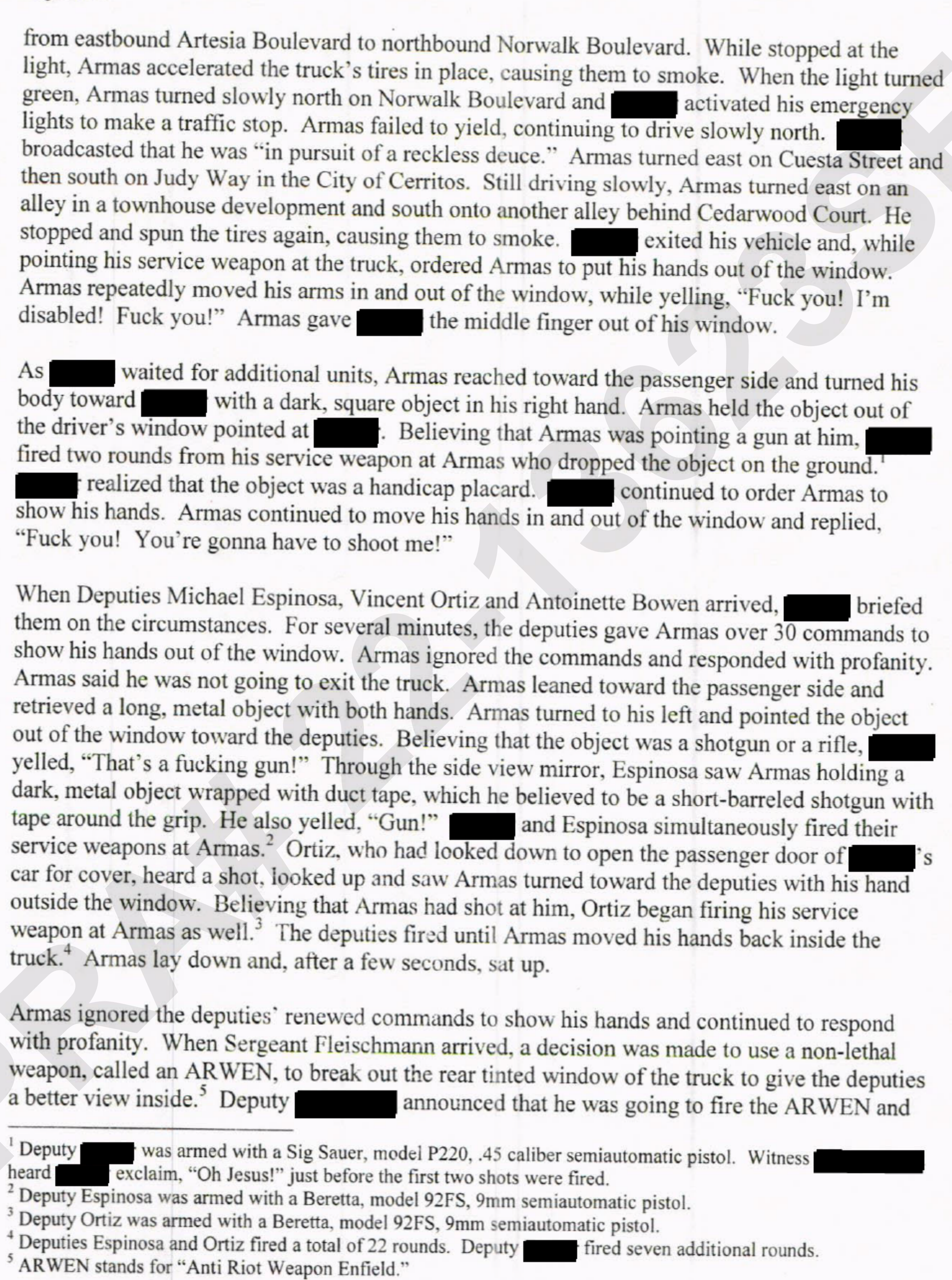
FACTUAL ANALYSIS

On February 26, 2012, at approximately 7:30 p.m., LASD Deputy [redacted], on uniformed patrol in a marked vehicle in the City of Artesia, received a broadcast that a black truck hit a wall on the 91 Freeway and exited at Pioneer Boulevard. Deputy [redacted] saw Eduardo Armas driving a dark green truck with collision damage east on Artesia Boulevard from Pioneer Boulevard. Armas drove over the raised center median and failed to stop for a red light at Elaine Avenue. [redacted] made a u-turn and caught up to Armas, who was stopped at a red light in the left turn lane

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
(213) 974-3888
Fax: (213) 620-1208
WEBSITE: http://da.co.la.ca.us

LASD-000001 RELEASE DATE: 1/26/2023

PRA#22-13623SE



from eastbound Artesia Boulevard to northbound Norwalk Boulevard. While stopped at the light, Armas accelerated the truck's tires in place, causing them to smoke. When the light turned green, Armas turned slowly north on Norwalk Boulevard and [redacted] activated his emergency lights to make a traffic stop. Armas failed to yield, continuing to drive slowly north. [redacted] broadcasted that he was "in pursuit of a reckless deuce." Armas turned east on Cuesta Street and then south on Judy Way in the City of Cerritos. Still driving slowly, Armas turned east on an alley in a townhouse development and south onto another alley behind Cedarwood Court. He stopped and spun the tires again, causing them to smoke. [redacted] exited his vehicle and, while pointing his service weapon at the truck, ordered Armas to put his hands out of the window. Armas repeatedly moved his arms in and out of the window, while yelling, "Fuck you! I'm disabled! Fuck you!" Armas gave [redacted] the middle finger out of his window.

As [redacted] waited for additional units, Armas reached toward the passenger side and turned his body toward [redacted] with a dark, square object in his right hand. Armas held the object out of the driver's window pointed at [redacted]. Believing that Armas was pointing a gun at him, [redacted] fired two rounds from his service weapon at Armas who dropped the object on the ground.[1] [redacted] realized that the object was a handicap placard. [redacted] continued to order Armas to show his hands. Armas continued to move his hands in and out of the window and replied, "Fuck you! You're gonna have to shoot me!"

When Deputies Michael Espinosa, Vincent Ortiz and Antoinette Bowen arrived, [redacted] briefed them on the circumstances. For several minutes, the deputies gave Armas over 30 commands to show his hands out of the window. Armas ignored the commands and responded with profanity. Armas said he was not going to exit the truck. Armas leaned toward the passenger side and retrieved a long, metal object with both hands. Armas turned to his left and pointed the object out of the window toward the deputies. Believing that the object was a shotgun or a rifle, [redacted] yelled, "That's a fucking gun!" Through the side view mirror, Espinosa saw Armas holding a dark, metal object wrapped with duct tape, which he believed to be a short-barreled shotgun with tape around the grip. He also yelled, "Gun!" [redacted] and Espinosa simultaneously fired their service weapons at Armas.[2] Ortiz, who had looked down to open the passenger door of [redacted]'s car for cover, heard a shot, looked up and saw Armas turned toward the deputies with his hand outside the window. Believing that Armas had shot at him, Ortiz began firing his service weapon at Armas as well.[3] The deputies fired until Armas moved his hands back inside the truck.[4] Armas lay down and, after a few seconds, sat up.

Armas ignored the deputies' renewed commands to show his hands and continued to respond with profanity. When Sergeant Fleischmann arrived, a decision was made to use a non-lethal weapon, called an ARWEN, to break out the rear tinted window of the truck to give the deputies a better view inside.[5] Deputy [redacted] announced that he was going to fire the ARWEN and

---

[1] Deputy [redacted] was armed with a Sig Sauer, model P220, .45 caliber semiautomatic pistol. Witness [redacted] heard [redacted] exclaim, "Oh Jesus!" just before the first two shots were fired.
[2] Deputy Espinosa was armed with a Beretta, model 92FS, 9mm semiautomatic pistol.
[3] Deputy Ortiz was armed with a Beretta, model 92FS, 9mm semiautomatic pistol.
[4] Deputies Espinosa and Ortiz fired a total of 22 rounds. Deputy [redacted] fired seven additional rounds.
[5] ARWEN stands for "Anti Riot Weapon Enfield."

then fired four rounds at the truck. One of the rounds made a hole in the rear passenger side window.[6] Armas finally complied with the deputies' commands and held his hands out of the window. Deputies [redacted], Espinosa and Ortiz removed Armas from the truck and handcuffed him. As the deputies laid him down on the ground and began first aid, Armas was yelling, "Fuck you! Let go of me! Get your hands off of me!" No weapons were recovered from Armas. Inside the truck, deputies recovered a folded black metal wheelchair partially wrapped with duct tape and a pack of eight unopened beer cans.

Paramedics transported Armas to University of California Irvine Medical Center where he was treated for gunshot wounds to his left cheek, right forearm and right upper back. Armas was belligerent with hospital staff, shouting profanities and refusing to answer questions. A blood sample taken from Armas four hours after the incident showed a .18 blood alcohol content and evidence of cocaine and morphine ingestion.

Investigators interviewed Armas' [redacted] and [redacted] About 20 years ago, Armas was stabbed in the back. He is able to walk without the wheelchair, but uses it when he gets tired. They described Armas as a "normal" person when he is not drinking. However, he becomes angry and aggressive when he drinks. They said that, when intoxicated, Armas starts fights and instigates problems.

In case number VA123869, the District Attorney's Office charged Armas with resisting an executive officer, driving under the influence and evading arrest. The case is set for pretrial hearing on June 6, 2013, in Department "S" of the Norwalk Division of the Los Angeles County Superior Court.

Statement of Eduardo Armas

On February 28, 2012, investigators interviewed Armas in the hospital after a *Miranda* advisement. Armas said he had been drinking beer and vodka shortly before the incident. He admitted to using cocaine a day or two before the incident. Armas did not know how or why he was driving on the 91 Freeway. He did not remember being followed by the police or being shot. He did recall stopping the truck and trying to remove the wheelchair.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

[6] There was no evidence that any of the ARWEN rounds struck Armas.

PRA# 22-13628SE

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"When the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

CONCLUSION

The evidence examined in this investigation shows that Deputy [redacted] attempted to conduct a traffic stop on Armas whom he reasonably suspected of fleeing the scene of a collision on the freeway and driving under the influence. Armas drove recklessly and failed to stop for a red light. While waiting to turn onto Norwalk Boulevard, Armas smoked his tires in apparent disregard for the marked police vehicle behind him. Armas ignored [redacted]'s emergency lights, drove into the alley and, again in disregard for the deputy's presence, smoked his tires. Armas flagrantly disobeyed [redacted]'s order to keep his hands out of the window, by repeatedly moving his arms in and out of the window. By yelling profanities and gesturing with his middle finger, Armas gave [redacted] every reason to believe that he did not intend to voluntarily comply with his orders.

As Armas reached toward the passenger side, [redacted] reasonably believed that he was arming himself. When he turned toward [redacted] and pointed a dark, square object at him, in view of his previous defiant actions, Armas placed [redacted] in imminent fear of being shot with a firearm. In justified self-defense, [redacted] fired at Armas, causing him to drop what turned out to be a handicap placard.

In spite of having just been shot at by a law enforcement officer, Armas continued to ignore several deputies' numerous orders to keep his hands out of the window, challenged them to shoot him and yelled profanities. At that point, Armas had made it clear to the deputies that he was an irrational, possibly intoxicated, potentially dangerous individual. When he pointed a long, metal object out of the window, Deputies [redacted] and Espinosa were reasonable in believing that it was a shotgun or a rifle. In imminent fear of great bodily injury or death to themselves and the other deputies in the area, [redacted] and Espinosa fired their service weapons at Armas. When Ortiz heard the shots and saw Armas turned toward the deputies with his hand outside the window, he

PRA# 22-13023SE

was reasonable in believing that Armas had shot at them. In defense of himself and the other deputies, Ortiz fired his service weapon at Armas. Armas continued to ignore the deputies' commands to show his hands, but then finally submitted to being taken into custody after the ARWEN rounds were fired.

While no weapons were recovered from Armas and the suspected firearms turned out to be innocuous items, the deputies' beliefs that he was armed were reasonably based on the shape of the objects and Armas' dangerous, defiant conduct. Legally justified self-defense does not require that the danger actually existed. CALCRIM No. 3470.

Given the rapidly evolving situation that confronted Deputies [redacted], Espinosa and Ortiz, we conclude that they acted lawfully in self-defense and defense of others. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

JASON P. LUSTIG
Deputy District Attorney
(213) 974-3888

c: Deputy [redacted] #[redacted]
Deputy Michael Espinosa #[redacted]
Deputy Vincent Ortiz #[redacted]

PRA#22-13623SE